

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

MICHAEL COTA,

Plaintiff,

v.

JOHN DOE, *et al.*,

Defendants.

Case No. 3:21-CV-00350-RCJ-CLB

**REPORT AND RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE<sup>1</sup>**

[ECF Nos. 7, 9, 10]

Before the Court are Plaintiff Michael Cota's ("Cota"), applications to proceed *in forma pauperis* (ECF Nos. 7, 10) and his second amended *pro se* civil rights complaint (ECF No. 9). For the reasons stated below, the Court recommends that Cota's *in forma pauperis* applications (ECF Nos. 7, 10) be granted and that his second amended complaint (ECF No. 9) be dismissed without prejudice and without leave to amend.

**I. IN FORMA PAUPERIS APPLICATION**

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include

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<sup>1</sup> This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities."  
 2 LSR 1-1.

3 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with  
 4 some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th  
 5 Cir. 1981) (quotation marks and citation omitted). A litigant need not "be absolutely  
 6 destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*,  
 7 335 U.S. 331, 339 (1948).

8 A review of the applications to proceed IFP reveals Cota cannot pay the filing fee;  
 9 therefore, the Court recommends that the applications (ECF Nos. 7, 10) be granted.

## 10 **II. SCREENING STANDARD**

11 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A  
 12 provides, in relevant part, that "the court shall dismiss the case at any time if the court  
 13 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a  
 14 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant  
 15 who is immune from such relief." 28 U.S.C. § 1915A(b). A complaint is frivolous when  
 16 "it lacks an arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325  
 17 (1989). This includes claims based on legal conclusions that are untenable (e.g., claims  
 18 against defendants who are immune from suit or claims of infringement of a legal interest  
 19 which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,  
 20 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th  
 21 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same  
 22 standard applied in the context of a motion to dismiss under Federal Rule of Civil  
 23 Procedure 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which  
 24 requires dismissal where the complaint fails to "state a claim for relief that is plausible on  
 25 its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

26 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*  
 27 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must  
 28 accept as true all well-pled factual allegations, set aside legal conclusions, and verify

1 that the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S.  
 2 662, 679 (2009). The complaint need not contain detailed factual allegations, but must  
 3 offer more than “a formulaic recitation of the elements of a cause of action” and “raise a  
 4 right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is  
 5 taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies  
 6 to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).  
 7 Still, a liberal construction may not be used to supply an essential element of the claim  
 8 not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is  
 9 appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice  
 10 of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v.*  
 11 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

### 12 **III. SCREENING OF SECOND AMENDED COMPLAINT**

13 In his second amended complaint (“SAC”), Cota sues Defendants Ryan Young  
 14 and Nadine Chranowski under 42 U.S.C. § 1983. (See ECF No. 9.) Cota alleges that  
 15 the defendants, who are investigators at the Douglas County Sheriff’s Office, targeted  
 16 Cota for criminal investigation based on association with African-Americans. (*Id.* at 3.)  
 17 Moreover, Cota asserts that the criminal investigation conducted by Defendants was  
 18 “racially motivated” and violated his rights to due process and equal protection. (*Id.* at 4-  
 19 5). Finally, Cota claims that he is being subjected to cruel and unusual punishment  
 20 because if the investigation was not conducted in this discriminatory manner, he would  
 21 not have been sentenced. (*Id.* at 6). Cota seeks monetary damages and a complete  
 22 review of Defendants’ past investigative practices. (*Id.* at 11.)

23 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority  
 24 to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d  
 25 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir.  
 26 2000)). The statute “provides a federal cause of action against any person who, acting  
 27 under color of state law, deprives another of his federal rights[,]” *Conn v. Gabbert*, 526  
 28 U.S. 286, 290 (1999), and is “merely . . . the procedural device for enforcing substantive

1 provisions of the Constitution and federal statutes.” *Crompton v. Gates*, 947 F.2d 1418,  
2 1420 (9th Cir. 1991). Claims under § 1983 require the plaintiff to allege (1) the violation  
3 of a federally-protected right by (2) a person or official who acts under the color of state  
4 law. *Anderson*, 451 F.3d at 1067.

5       However, § 1983 is not a backdoor through which a federal court may overturn a  
6 state court conviction or award relief related to the fact or duration of a sentence. Section  
7 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts  
8 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they  
9 different in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir.  
10 2003) (quoting *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take  
11 care to prevent prisoners from relying on § 1983 to subvert the differing procedural  
12 requirements of *habeas corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at  
13 486-87; *Simpson v. Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner  
14 challenges the legality or duration of his custody, raises a constitutional challenge which  
15 could entitle him to an earlier release, or seeks damages for purported deficiencies in  
16 his state court criminal case, which effected a conviction or lengthier sentence, his sole  
17 federal remedy is a writ of *habeas corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997);  
18 *Heck*, 512 U.S. at 481; *Wolf v. McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v.*  
19 *Rodriguez*, 411 U.S. 475 (1973); *Simpson*, 528 F.3d at 692-93. Stated differently, where  
20 “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction  
21 or sentence,” then “the complaint must be dismissed unless the plaintiff can demonstrate  
22 that the conviction or sentence has already been invalidated.” *Heck*, 512 U.S. at 487.

23       It appears that Cota is challenging the constitutionality of his state court criminal  
24 convictions. Consequently, he must demonstrate that his conviction has been overturned  
25 to proceed in an action under § 1983. As he has not done so, his sole relief is a *habeas*  
26 *corpus* action. The Court, therefore, recommends that the SAC be dismissed without  
27 prejudice and without leave to amend.

1 **IV. CONCLUSION**

2 For the reasons articulated above, the Court recommends that Cota's applications  
3 to proceed *in forma pauperis* (ECF Nos. 7, 10) be granted, and his second amended  
4 complaint (ECF No. 9) be dismissed without prejudice and without leave to amend.

5 The parties are advised:

6 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
7 Practice, the parties may file specific written objections to this Report and  
8 Recommendation within fourteen days of receipt. These objections should be entitled  
9 "Objections to Magistrate Judge's Report and Recommendation" and should be  
10 accompanied by points and authorities for consideration by the District Court.

11 2. This Report and Recommendation is not an appealable order and any  
12 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the  
13 District Court's judgment.

14 **V. RECOMMENDATION**

15 **IT IS THEREFORE RECOMMENDED** that Cota's applications to proceed *in*  
16 *forma pauperis* (ECF Nos. 7, 10) be **GRANTED**; and,

17 **IT IS FURTHER RECOMMENDED** that Cota's second amended complaint (ECF  
18 No. 9) be **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND**.

19 **DATED:** September 24, 2021.

20   
21 **UNITED STATES MAGISTRATE JUDGE**